

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANTHONY GERARD LEWIS,

Plaintiff,

v.

J. BEARD, et. al.,

Defendants.

No. C 15-03335 BLF (PR)

**ORDER OF DISMISSAL WITH  
LEAVE TO AMEND**

Plaintiff, a state prisoner at Salinas Valley State Prison ("SVSP"), filed the instant civil rights action in *pro se* pursuant to 42 U.S.C. § 1983, challenging conditions of confinement. Plaintiff's motion for leave to proceed *in forma pauperis* will be granted in a separate order.

**DISCUSSION**

**A. Standard of Review**

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a

1 claim upon which relief may be granted or seek monetary relief from a defendant who is  
 2 immune from such relief. *See id.* § 1915A(b)(1),(2). *Pro se* pleadings must, however, be  
 3 liberally construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir.  
 4 1988).

5 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential  
 6 elements: (1) that a right secured by the Constitution or laws of the United States was  
 7 violated, and (2) that the alleged violation was committed by a person acting under the  
 8 color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

#### 9 **B. Plaintiff's Claims**

10 Plaintiff claims that on February 19, 2014, he requested legal envelopes from  
 11 Defendant S. Miranda at the law library in Facility C at SVSP. (Compl. Attach. at 1.) He  
 12 claims that he told her he was indigent and not represented by a lawyer, which entitled  
 13 him to legal supplies. (*Id.* at 1-2.) Plaintiff claims that Defendant Miranda lied when she  
 14 told him that she did not have envelopes when “in fact she did have these legal envelopes  
 15 stored in the prison law library.” (*Id.* at 2.) Plaintiff claims that due to Defendant  
 16 Miranda's actions, he was denied access to the courts in pursuing his habeas petition  
 17 (Case No. TA073046) in the Superior Court of California for the County of Los Angeles,  
 18 which denied the petition as untimely on April 4, 2014. (*Id.* at 2, Ex. B.) Plaintiff claims  
 19 that Defendants J. Beard, W. L. Muniz, V. J. Solis, J. Pehrson, M. Colvin, K. J. Allen, S.  
 20 K. Heminway and S. Tomlinson were involved in denying his right of access to the courts  
 21 in denying his appeals on the matter thereafter. (*Id.* at 2-3.)

22 Plaintiff filed a civil rights action in this Court alleging that Defendants' actions  
 23 violated his right of access to the courts. *See* Case No. 14-04520 BLF (PR). The Court  
 24 found that Plaintiff's allegations were insufficient to state such a claim because he failed  
 25 to allege actual injury and show that he was pursuing nonfrivolous claims. *Id.*; *see Lewis*  
 26 *v. Casey*, 518 U.S. 343, 352-53 & n.3 (1996); *Gluth v. Kangas*, 951 F.2d 1504, 1509 n.2  
 27 (9th Cir. 1991). The complaint was dismissed with leave to amend on January 23, 2015.  
 28 With an extension of time granted thereafter, Plaintiff had until March 23, 2015, to file an

1 amended complaint. When he failed to do so, the Court dismissed the action without  
2 prejudice on April 15, 2015. In the instant action, Plaintiff claims that Defendants'  
3 continued actions in depriving him of legal supplies caused him to miss the filing  
4 deadline, which resulted in denying him access to the courts. (Compl. Attach. at 5.)

5 In dismissing with leave to amend Plaintiff's prior action, the Court advised  
6 Plaintiff of the legal standard for stating a cognizable access to the courts claim.  
7 Specifically, Plaintiff was advised that there must be a showing that the denial of the  
8 materials denied him the ability to perfect and pursue legal action, *i.e.*, actual injury to  
9 court access. *See Gluth*, 951 F.2d 1509 n.2; *see also King v. Atiyeh*, 814 F.2d 565, 565  
10 (9th Cir. 1987) (no established minimum postage that state must meet; focus of court is  
11 whether plaintiff has been denied meaningful access); *Franklin v. Oregon*, 563 F. Supp.  
12 1310, 1331 (D. Or. 1983) (prisoner with 106 separate actions before court clearly has no  
13 trouble getting papers to court and claim dismissed as frivolous). Assuming that the  
14 denial of the state habeas petition as untimely was indeed caused by Defendants' actions,  
15 Plaintiff has shown actual injury. However, the hindered claim must be a nonfrivolous  
16 one. *See Lewis*, 518 U.S. at 352-53 & n.3. Here, Plaintiff has failed to state the  
17 nonfrivolous claim(s) he was pursuing in the state habeas petition. Plaintiff shall be given  
18 an opportunity to file an amended complaint to attempt to correct this deficiency.

19 With respect to the dismissal of the prior § 1983 action before this Court, it cannot  
20 be said that Plaintiff has been denied meaningful access since he has herein been able to  
21 file another suit to pursue his claim. *See Franklin*, 563 F. Supp. at 1331. Furthermore,  
22 even if the fact that his action was dismissed without prejudice is sufficient to show actual  
23 injury, Plaintiff has failed to state facts showing how specific individuals acted to deprive  
24 him of legal material which prevented him from meeting the Court's deadline. Plaintiff's  
25 general allegation that "[p]redicated on denial of legal supplies... plaintiff was unable to  
26 meet his court obligations," (Compl. Attach. at 2 and 7), is insufficient to show any single  
27 individual's liability. Accordingly, Plaintiff shall be given an opportunity to amend this  
28 claim. In amending this claim, Plaintiff is advised that liability may be imposed on an

1 individual defendant under § 1983 only if he can show that the defendant proximately  
2 caused the deprivation of a federally protected right, *i.e.*, Plaintiff's right of access to the  
3 courts. *See Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988); *Harris v. City of*  
4 *Roseburg*, 664 F.2d 1121, 1125 (9th Cir. 1981). A person deprives another of a  
5 constitutional right within the meaning of § 1983 if he does an affirmative act,  
6 participates in another's affirmative act or omits to perform an act which he is legally  
7 required to do, that causes the deprivation of which the plaintiff complains. *See Leer*, 844  
8 F.2d at 633.

9 The Court also notes that the complaint does not indicate whether Plaintiff  
10 exhausted the claim involving Case No. 14-05420 BLF (PR) through the prison's  
11 grievance procedure. The complaint indicates that he exhausted his February 19, 2014  
12 claim against Defendant Miranda through SVSP log # 14-1205, but no other grievance is  
13 referenced. (Compl. at 2.) Plaintiff is advised that the claim involving Case No. 14-  
14 04520 BLF (PR) may be subject to dismissal for failure to exhaust administrative  
15 remedies if he failed to exhaust prior to filing this suit. Accordingly, he should clearly  
16 identify the appeal number associated with the exhaustion of this claim in the amended  
17 complaint. Otherwise, he must first exhaust the claim and then file a separate action.

## 18 19 CONCLUSION


20 For the foregoing reasons, the complaint is **DISMISSED** with leave to amend.  
21 Within **twenty-eight (28) days** of the date this order is filed, Plaintiff shall file an  
22 amended complaint. The amended complaint must include the caption and civil case  
23 number used in this order, Case No. C 15-03335 BLF (PR), and the words "AMENDED  
24 COMPLAINT" on the first page. If using the court form complaint, Plaintiff must  
25 answer all the questions on the form in order for the action to proceed.

26 **Failure to respond in accordance with this order in the time provided will**  
27 **result in the dismissal of this action without prejudice and without further notice to**  
28 **Plaintiff.**

1 The Clerk shall include two copies of the court's complaint with a copy of this  
2 order to Plaintiff.

3 **IT IS SO ORDERED.**

4 DATED: August 5, 2015

  
BETH LABSON FREEMAN  
United States District Judge